

CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 1/28/03

AGENDA ITEM _____

WORK SESSION ITEM _____

WS 2

TO: Mayor and City Council

FROM: City Attorney

SUBJECT: Amendments to the Mobilehome Space Rent Stabilization Ordinances

RECOMMENDATION:

It is recommended that the City Council review and comment on this report.

BACKGROUND

In 2001, the City conducted two hearings under the Mobilehome Space Rent Stabilization Ordinance. Both hearings involved costly and burdensome legal tactics, which did not serve the resident's or park owner's interests. The City Attorney has met several times with a group of residents representing the nine-mobilehome communities to discuss this situation. In early December, the City Attorney also met with the park owners. As the result of those meetings, the following concerns were identified.

Notice Deficiencies

Park owners are required to send each resident a Notices of Space Rent Increase prior to implementing a space rent increase. The Ordinance provides several bases for a park owner to obtain a space rent increase. However, the residents must be properly noticed of the amount of the increase and *the basis for the increase*. In a previous hearing, a park owner noticed a rent increase based on extraordinary repair expenses and then attempted to obtain and present evidence of comparable rents in order to justify the rent increase. The residents were required to incur the expense of an attorney and participate in a hearing to evaluate a rent increase that had not been properly noticed.

From the park owners view, he or she could notice a space rent increase, secure an attorney, obtain expert witness testimony, participate in the hearing, and be denied the increase on the basis that the original notice of rent increase did not describe the type of space rent increase the park owner was presenting evidence for at the hearing. This is a costly way to identify improper notices of space rent increase.

By far the most common notice deficiency problem seems to be the type and sufficiency of the support documentation for the notice provided by the park owner. In this situation, the residents are forced to submit a Petition for Rent Review just to be able to gain access to what might be considered basic information. This process requires the residents to hire an attorney and incur substantial costs to obtain information from the park owner either voluntarily or by subpoena. Any evaluation of the

support documentation for the proposed space rent increase is not discussed until the hearing. This problem can be resolved by requiring the park owner to clearly identify which type of rent increase he or she is requesting and the specific information to be included with the Notice of Rent Increase.

Burdensome and Expensive Hearings

In 2002, two Petitions for Rent Review under the Mobilehome Space Rent Stabilization Ordinance were heard. Unlike previous hearings, these two hearings involved pre-trial procedures concerning discovery – the method of securing information from one of the parties involved in the hearing. The process became burdensome and costly for both residents and park owners.

In the New England Village Petition for Rent Review, the City Clerk issued a subpoena duces tecum (demand for business records) at the request of the residents' attorney in order to obtain accounting and financial information unrelated to the actual cost of the capital improvement from the park owner. The City was required to conduct a separate hearing. This process resulted in the residents, park owner, and the City incurring additional expenses to resolve an information dispute.

In the Eden Roc Mobilehome Park Petition for Rent Review, the attorney for the park owner requested the City Clerk to issue more than ten subpoenas duces tecum in order to secure records of comparable rents from park owners in Hayward, information from the Public Utilities Commission, and information from Pacific Gas & Electric regarding the discount structure for utility charges in master metered parks. The information regarding comparable rents could have been obtained informally without the expense of an attorney and the resources of the City.

Both park owners and residents are in favor of an ordinance provision that clearly indicates what type of information must be included in each type of notice for space rent increase. A committee made up of park owners and residents could be created to develop the list of required information that would be included in any request for space rent increase.

THE RENT DISPUTE RESOLUTION PROCESS

THE EXISTING PROCEDURE

Presently, the City's ordinance allows a park owner to notice a rent increase by providing the amount of the increase, the time the increase will take effect, and support documentation justifying the amount of the increase. The residents of the park have thirty days from receiving the notice to file a Petition for Rent Review that triggers the formal hearing. If there is no opposition to the rent increase, it automatically goes into effect on the date contained in the notice.

The residents can choose between mediation followed by binding arbitration if the mediation is unsuccessful or non-binding arbitration with the possibility of judicial review. A review of past petitions shows that residents have selected the non-binding arbitration, rather than mediation. Their contention is that park owners would not voluntarily provide the information necessary to evaluate the rent increase proposed by the park owner.

PROPOSED CHANGES

Staff has reviewed approximately fifteen Mobilehome Space Rent Stabilization Ordinances from other cities. Generally, all these ordinances contain a mechanism for initiating a review of the proposed space rent increase, a hearing conducted by a hearing officer, board, or the council to evaluate the proposed increase in accordance with the guidelines provided for in the ordinance, and an appeal process which would end with an independent judicial review. The various phases of reviewing a proposed rent increase and the options available within each phase are outlined below. Staff is asking the Council to review the phases and options and provide Staff with direction regarding how Petitions for Space Rent Increase should be processed, and who should evaluate and authorize such increases. While not specifically discussed below, the same process would be used in order to evaluate requests for decreases in rent due to service reductions.

REQUIRED INFORMATION (PROPOSED)

The residents and the park owners agree that certain types of financial information would be necessary to properly evaluate any proposed rent increase. The City's Ordinance allows a park owner to increase rents to maintain a net operating income (NOI), maintain a return on investment (ROI), match other rents in parks with comparable features and conditions (Comparable Rents), be compensated for capital investments in the assets of the park, (Capital Improvement Pass-through), and annual increases for inflation. A park owner may notice a space rent increase based on one or more of these categories. In some notices, it is not clear which category of space rent increase is being noticed. Additionally, the same financial information may be required to support more than one category of space rent increase.

The residents and park owners have expressed interest in developing a specific list of information for each type of rent increase that would accompany a specific rent increase request. The types of rent increases would be identified and a list of financial information required to be submitted with the request for space rent increase would be incorporated into the ordinance.

MEET AND CONFER PROVISION (PROPOSED)

The residents are proposing that a mandatory meet and confer provision be added to the ordinance. This post-notice of rent increase meeting would provide a forum for the residents to review the space rent increase notice and the support documentation provided by the park owner. Notice deficiencies could be identified prior to any hearing on the merits of the space rent increase. Support documentation could be reviewed without the need for attorneys and a formal hearing.

While this meet and confer provision appears to be similar to the mediation choice provided under the City's current ordinance, the difference in this proposal is that the support documentation required by the ordinance under the proposed Required Information provision discussed above would require the park owner to provide the necessary information prior to any hearing.

The residents and the park owners are in favor of some type of organized face-to-face meeting where the residents could view the support documentation and have the opportunity to ask questions relating to the space rent increase.

Staff believes that a facilitator or mediator should be present during these meet and confer sessions to assist both parties in resolving any disputes. In the event the parties cannot agree, the petition would be scheduled for a formal hearing in order to determine the validity and amount of the space rent increase. The Mediation Board discussed below would perform a similar function to the meet and confer provision, except the meeting would be more formalized and structured.

FORMAL HEARING

In the event the parties do not agree on a space rent increase amount or a dispute arises as to adequacy of financial information supplied, a formal hearing would be scheduled. The City currently provides a hearing officer to hear the Petition for Rent Review. The residents have requested that a rent review board rather than a hearing officer conduct the hearing. Staff has reviewed a number of rent review ordinances from other cities. Generally, there are three broad categories of Rent Review Boards.

RENT REVIEW BOARD (PROPOSED)

The benefits of a board are the availability of a forum to resolve disputes without the need to use an outside service, which may not always be able to provide qualified hearing officers in a timely manner. Based on the qualifications of the board members, the board could be better qualified to understand and evaluate complicated financial information and accounting methods. As the hearing body, the City would not be required to contract with outside sources in order to secure hearing officers. This would save the City the expense of the hearing officer; However, a Rent Board would require additional staff support and legal consultation, which could offset any savings. If the Rent Review Board is independent and its decisions are not subject to Council appeal, the City will be forced to defend all decisions of the board in the event of a judicial appeal.

MEDIATION BOARD

As an alternative to the informal Meet and Confer session proposed above, the Petition for Rent Review can go directly to a Mediation Board. The Mediation Board's ability to hear a rent increase request can be voluntary or mandatory. It can just hear petitions challenging rent increases or it can require any rent increase application to be submitted to it before going into effect. The ordinance creating this type of board can also describe the procedure for reviewing a request for rent increase and the information required for the board to consider an application. The mediation process involves discussions between the parties facilitated by a professional mediator. The mediator assists the parties in coming to an agreement on the disputed issues, which is then memorialized and signed by the parties. Appeals from this board can go to arbitration, the Council, or to judicial review. The residents are in favor of the meet and confer provision rather than a mediation board.

INDEPENDENT BOARD

The Independent Board is mandatory and can either hear petitions from residents challenging a proposed increase or require a hearing for all rent increases whether the petition is challenged or not. The ordinance creating this type of board can also describe the procedure and guidelines for reviewing a request for rent increase and the information required for the board to consider an application. The board's decision is final with no appeal to arbitration or the Council. An appeal would go directly to judicial review.

BOARD with COUNCIL APPEAL

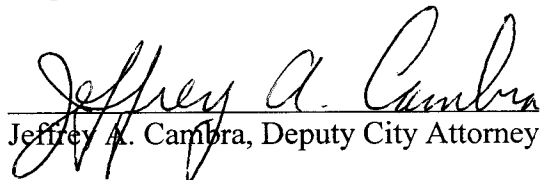
This board is similar to the independent board except that a party can appeal to the council if they do not agree with the decision of the board. The Planning Commission functions in this manner. The ordinance can limit the subject matter the Council can review on an appeal from a rent board determination, or it can provide for a new hearing before the Council. The residents support only a review by the Council of the procedures followed by the Rent Board and the adequacy of its finding. An appeal of the Council's decision would go to judicial review.

The park owners oppose the formation of a rent review board as a burdensome, ineffective procedure that could result in decisions for rent increases being made based on politics rather than the merits of the proposed increase. They would prefer to have the proposed required information and meet and confer provisions implemented and evaluate the effectiveness of those changes before replacing the hearing officer with a board. One park representative stated that the great majority of space rent increase petitions filed in San Jose are resolved using the meet and confer provision in that City's ordinance.

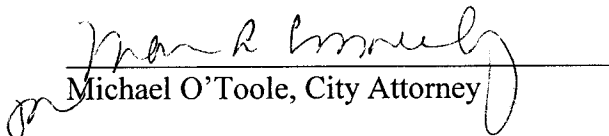
CONCLUSION:

A review of recent petitions and a request from the residents to change the procedures for hearing Rent Review Petitions necessitates the need to change certain provisions of the ordinance so that it can provide an effective, inexpensive method of evaluating rent increases for the benefit of both park owners and residents.

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